

Appl. No. 09/886,730
Atty. Docket No. 8594
Amdt. Dated May 7, 2004
Reply to Final Office Action of January 7, 2004
Customer No. 27752

REMARKS

Claims 6-7, 9-15, and 24-26 are pending in the present application. No additional claims fee is believed to be due.

Claims 6 and 11 have been amended. Antecedent basis is found on page 9, lines 5-6 and page 20, lines 5-7.

Claim 14 has been amended. Antecedent basis is found on page 9, lines 5-10 and page 20, lines 5-7.

Restriction Requirement

The Examiner has required restriction as to Claims 1-5 (Group I); Claims 6-15 (Group II), and Claims 16-23 (Group III), because the inventions are distinct. Applicants elect Group II, encompassing Claims 6-15, without traverse.

Obviousness Double Patenting

The Examiner has rejected Claims 6-15 for obviousness-type double patenting over Claims 6-10 of co-pending Application No 09/886. Pursuant to M.P.E.P. §1490, Applicants enclose an appropriate Terminal Disclaimer compliant with 35 U.S.C. §253 and 37 C.F.R. §3.73.

Rejection Under 35 USC 103

The Examiner has rejected Claims 6, 7, 9-12, and 15 under 35 USC 103(a) as being unpatentable over Srinivasan, et al. (U.S. Patent No. 5,567,501) and Palumbo (WO 96/10979). Claim 13 has been rejected under 35 USC 103(a) as being unpatentable over Srinivasan, et al. and Palumbo, et al., in view of Abuto, et al. (U.S. Patent No. 5,788,684). Claims 6, 7, 9-15, and 24-26 have been rejected under 35 USC 103(a) as being unpatentable over Benson, et al. (U.S. Patent No. 5,628,097). Applicants respectfully traverse this rejection. To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Applicants submit that Srinivasan, Palumbo, and Benson do not meet this requirement.

Srinivasan discloses a thermally apertured nonwoven product comprising a nonwoven layer of fibers having a higher melting temperature and a polymeric material having a lower melting temperature and a property of shrinking under application of heat (column 1, lines 60-65). Palumbo discloses a covering structure for covering an absorbent body of an absorbent sanitary article. The structure comprises an upper and lower layer of a non-woven fibrous material and an intermediate layer comprising an elastic film. (Page 3) Benson discloses a method for aperturing a nonwoven web

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(abstract). Benson discloses that the nonwoven web may be a laminate or a single layer. Benson provides a three layer example in which the outer layers are spunbond and the central layer is a meltblown (column 7, lines 26-42).

The present invention is directed toward an elastic laminate web. One key benefit of the present invention is that thermoplastic and non-thermoplastic material can be combined to form an elastomeric web without the use of an adhesive (page 12, lines 23-25). This enables the use of a variety of elastic materials having various properties.

As amended, Claims 6 and 11 now require a non-thermoplastic elastic material. All of the cited art disclose middle layer materials which are thermoplastic. Srinivasan discloses a heat shrink material, Palumbo discloses a thermoplastic elastomer, and Benson discloses a meltblown material. In addition to being thermoplastic, the meltblown discloses in Benson would also not be an elastic material. Abuto does not disclose non-thermoplastic elastic materials.

As amended, Claim 14 now requires that the elastic material has a higher melting point than the first and second webs and that the elastic material is more elastic than the first and second webs. Both Srinivasan and Benson teach away from the present invention. Srinivasan discloses that the heat shrink material will have a lower melting point than the outer layers. Benson discloses a meltblown as the middle layers. Meltblowns are known to one of ordinary skill in the art to not be as elastic as a spunbond material. Palumbo does not teach or suggest that the elastic material would have a higher melting point.

Conclusion

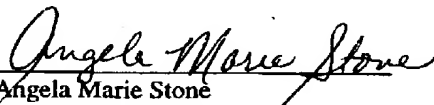
In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections. Early and favorable action in the case is respectfully requested.

Applicants have made an earnest effort to place their application in proper form and to

Applicants respectfully request reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 6-7, 9-15, and 24-26.

Respectfully submitted,

John J. Curro, et al.

By 
Angela Marie Stone
Attorney for Applicants
Registration No. 41,335
(513) 634-9397

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